

May 21, 2003

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
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Washington, DC 20554

Re: PSWN Program Reply Comments to the Commission's Notice of Proposed Rulemaking, In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children's Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168.

Dear Ms. Dortch:

On behalf of the Public Safety Wireless Network (PSWN) Program and pursuant to Section 1.51 of the Commission's Rules, 47 C.F.R. § 1.51 (2002), enclosed herewith for filing are an original and four (4) copies of the PSWN Program's Reply Comments in the above-referenced proceeding.

Kindly date-stamp and return the additional, marked copy of this cover letter and filing to the person delivering it.

Should you require any additional information, please contact the undersigned.

Respectfully submitted,



Steven Proctor
Executive Director,
Utah Communications Agency Network
Executive Vice-Chair,
PSWN Executive Committee

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**Before the
Federal Communications Commission
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In the Matter of

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Affecting the Conversion to)	RM 9832
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Digital Television Broadcasters)	
Standardized and Enhanced Disclosure)	MM Docket No. 00-168
Requirements for Television Broadcast)	
Licensee Public Interest Obligations)	

To: The Commission

**PUBLIC SAFETY WIRELESS NETWORK PROGRAM
REPLY COMMENTS**

Filed by: The Public Safety Wireless Network Program

Date: May 21, 2003

**Before the
Federal Communications Commission
Washington, DC 20554**

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**PUBLIC SAFETY WIRELESS NETWORK PROGRAM
REPLY COMMENTS**

1. The Public Safety Wireless Network (PSWN) Program¹ Executive Committee (EC) respectfully offers the following reply comments for the Commission in response to the Notice of Proposed Rulemaking² (NPRM) adopted by the Federal Communications Commission (Commission) pursuant to MB Docket No. 03-15 *et al.*, released January 27, 2003.

¹ The PSWN Program is a federally funded initiative operating on behalf of all local, state, federal, and tribal public safety agencies. The Department of Justice and the Department of the Treasury are jointly leading the PSWN Program's efforts to plan and foster interoperability among public safety wireless networks. The PSWN Program is a 10-year initiative that is an effort to ensure that no man, woman, or child loses his or her life because public safety officials cannot talk to one another.

² See NPRM, In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children's Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168, rel. January 27, 2003 (*DTV NPRM*).

I. BACKGROUND

2. A series of actions that began 10 years ago have led to 74 megahertz (MHz) of spectrum being allocated to exclusive public safety use.³ Of that amount dedicated to public safety, 24 MHz is located in the portion of the 700 MHz band currently included in the transition from analog to digital television (DTV) broadcasting. The public safety community is particularly concerned with facilitating the transition as it relates to channels 63, 64, 68, and 69 because those channels occupy the spectrum that is scheduled to be released for public safety use at the close of 2006.

3. The Media Bureau's 03-15 docket is the second periodic review by the Commission in an effort to ensure a judicious and timely transition.⁴ During the comment period, stakeholders have submitted nearly 70 comments in response to the NPRM. This group, which includes public safety associations, broadcasters, industry, and private citizens, provided a diverse range of input to the Commission concerning this rulemaking.

III. DISCUSSION

A. Public Safety Requires Immediate Access to the Upper 700 MHz Band

4. The PSWN Program reiterates the urgent need for public safety agencies to gain access to the spectrum currently occupied by channels 63, 64, 68, and 69. In response to some commenters, the program acknowledges that gaining access to the spectrum in an expedited manner could impact over-the-air services. As some commenters have pointed out, "it is nonsensical to argue that the Commission serves the public interest by depriving millions of

³ See First Report and Order, In the Matter of the Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97-157, rel. December 31, 1997; Second Report and Order, In the Matter of the 4.9 GHz Band Transferred from Federal Government Use, WT Docket No. 00-32, rel. February 27, 2002, at para. 1.

⁴ See FN 2. MB Docket No. 03-15 is combined with several other FCC rulemaking dockets relevant to assessing the progress of the migration of analog television broadcasters to the digital band.

households from any sort of actual reception of any of their local television stations.”⁵ Others have gone even further to note that “uninterrupted television service to those needing it most—low income families—ranks among the highest priority goals of the DTV implementation process.”⁶ The PSWN Program accepts the importance of every American’s access to immediate information, especially in the case of emergencies, and agrees the Commission should consider the diverse interests of the wide array of parties that would be affected by this transition process. However, the PSWN Program submits that the ability of public safety personnel to provide an effective, timely, and coordinated response to emergencies is paramount. By granting speedy access to the 700 MHz band, the public safety community can begin to implement systems on the General Use, Interoperability, and State License spectrum, while also alleviating the dangerous public safety spectral congestion that could potentially cost lives and property.⁷

5. The Commission could take several affirmative steps that would help public safety gain access to this spectrum quickly. The first would be to work with the Congress to set a firm date for the transition from analog broadcasting to public safety use. As Motorola asserts, “the time is ripe for all industry parties including public safety officials, broadcasters, equipment manufacturers, and others to work with the Congress to develop a more precise and definitive end to the DTV transition and to specify a near-term ‘date certain’ for the recovery of the analog

⁵ Comments of the National Broadcasting Company, Inc. and Telemundo Group, Inc., In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children’s Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168, April 21, 2003, at p. 4.

⁶ Comments of Civil Rights Organizations, In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children’s Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168, April 21, 2003, at p. 5.

⁷ See Comments of the National Telecommunications and Information Administration (NTIA), In the Matter of Reallocation of the Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97-157, September 15, 1997, at p. 2.

broadcast spectrum.”⁸ Second, as the New York State Office of Technology (NYS-OFT) suggests, incentives should be developed to encourage early clearing. Generally, the PSWN Program supports any plan that would enable broadcasters to transition earlier from the public safety allotment. For example, the plan proposed by the NYS-OFT suggests that, “the Commission should consider allowing an extension of the ‘hard cutover’ date for those stations that elect to move these operations to their DTV allotment. This date is currently at December 31, 2005, but could be extended to the date for which the ‘85% penetration’ has been deemed met.”⁹ A third method the Commission should employ to limit the lengthy DTV transition would be to prohibit blanket extensions. This approach would prevent the scenario in which stations would be allowed to “piggy back” on a blanket extension, which would prevent some valuable and theoretically available spectrum from being released to land mobile uses.¹⁰ In general, the Commission should “remain flexible, creative, and focused in finding solutions to clear the 700 MHz bands so that public safety may access the allocation nationwide.”¹¹

6. When evaluating the implications of early access to public safety spectrum, the Commission should consider three important points made by the Association of Public-Safety Communications Officials—International (APCO)—

⁸ Comments of Motorola, Inc., In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children’s Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168, April 21, 2003, at p. 4 (*Motorola Comments, MB 03-15*).

⁹ Comments of the New York State Office of Technology, In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children’s Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168, April 21, 2003, at para. 21 (*NYS-OFT Comments, MB 03-15*).

¹⁰ See NYS-OFT Comments, MB 03-15, at para. 32.

¹¹ Motorola Comments, MB 03-15, at p. 5.

- “First, operations within the band will be fully interoperable, due to the Commission’s designation of interoperability channels and a digital equipment standard.
- Second, the 700 MHz band is immediately adjacent to, and compatible with, the 800 MHz band, which already contains a substantial portion of the nation’s public safety communications infrastructure.
- Third, the new spectrum capacity in the 700 MHz band will facilitate the development of new wide area multi-jurisdictional and multi-agency radio systems, creating seamless interoperability for all users [of] such systems.”¹²

As APCO points out, access to the 700 MHz band would permit the public safety community and, indirectly, the American public, to reap benefits well beyond just additional spectrum.

B. The Commission Should Consider the Technical Rules That Impact Access to the Spectrum

7. The Commission must also consider the technical measures that may enable public safety to have timely access to the spectrum. For instance, the established intermediate deadlines drive the transition; if these deadlines are not enforced or are allowed to slip, the transition will slow and the valuable spectrum will lie fallow. The Commission must continue to aggressively pursue deadlines such as channel election. “The channel election deadline is the lynch-pin in the successful clearing of the 700 MHz band, and must be firmly established and strictly enforced if the Commission’s goals are to be realized any time in the near future.”¹³

¹² Comments of APCO, In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children’s Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168, April 21, 2003, at p. 4.

¹³ Comments of Access Spectrum, LLC, In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children’s Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168, April 21, 2003, at p. 5 (*Access Spectrum Comments, MB 03-15*).

8. A second technical measure the Commission must consider is television maximization. As commenters have pointed out, out-of-core broadcasters have little internal incentive to replicate their analog coverage or to apply for facilities to maximize their DTV coverage. One party submitting comments points out that it is in the public interest to provide incentives to broadcasters to replicate or maximize coverage as early as possible.¹⁴ The PSWN Program supports actions to encourage early maximization, such as Motorola's suggestion that "...the FCC should also consider waiving the maximization requirement for DTV allotments in the Upper 700 MHz band that have a direct impact on the ability of public safety stations to deploy."¹⁵

9. A final technical consideration for the Commission is whether interference protection should be fully afforded to stations that are authorized or that have applied for DTV facilities. The PSWN Program agrees with the NYS-OFT that "the most efficient utilization of the spectrum would be obtained when protection is afforded based upon what is realistic, not what is ideal."¹⁶ APCO further asserts that, "Rules protecting incumbent television stations from interference must also be narrowly drawn so as to avoid creating unnecessary zones of protection, which would limit the availability of the spectrum for public safety use."¹⁷ The PSWN Program recognizes that broadcasters need to be protected from interference to assure quality services; however, the protection should be reasonable and take into account the need to maximize public safety access to the spectrum that has been allocated for that purpose.

¹⁴ See Comments of DataCom Wireless, LLC, In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children's Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168, April 21, 2003, at p. 6.

¹⁵ Motorola Comments, MB 03-15, at p. 7.

¹⁶ NYS-OFT Comments, MB 03-15, at para. 23.

¹⁷ APCO Comments, MB 03-15, at p. 2.

C. Clear Definitions Must Be Established to Expedite the DTV Transition

10. The PSWN Program supports the National Cable & Telecommunications Association assertion stating that, “The answers to the Notice’s interpretive questions, therefore, should be guided by the need to expedite the transition without disenfranchising viewers.”¹⁸ At the same time, the Commission should remain aware of the additional benefits of creating robust, interoperable communications for public safety once the spectrum is released to assignment.¹⁹ Arguably, the greatest remaining hurdle to overcome before public safety can implement systems that use this spectrum is the 85-percent penetration requirement in the major markets.²⁰ If this goal is not achieved, the transition could drag on for years beyond the tentative date sent by the Congress. It is clear that the Congress intended to complete the transition by the set date of December 31, 2006; however, the contingent market forces have not encouraged the transition as originally anticipated. The onus is now on the Commission to implement the timely transition. To do so, the Commission should embrace any opportunity to bolster the count that determines the needed 85-percent penetration requirement that would signal the initiation of the transition. For example, “It is therefore permissible—and desirable—to treat digital signals that are downconverted and carried on a system in analog format as ‘carried’ for purposes of the test, so that subscribers to that system will count towards the 85 percent threshold.”²¹

11. An additional factor that impacts the timeline of the transition is the measurement technique the Commission uses in determining a relevant television market, the designated market area (DMA). If not properly defined, the measurement technique could include areas where viewers are unlikely to be able to receive over-the-air digital signals (e.g., terrain or

¹⁸ Comments of the National Cable & Telecommunications Association, In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children’s Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168, April 21, 2003, at p. 19 (*National Cable and Telecommunications Association Comments*, MB 03-15).

¹⁹ See APCO Comments, MB 03-15, at p. 3.

²⁰ See Balanced Budget Act of 1997, Publ 105-33, 47 U.S.C. 309(j) 14(B).

²¹ National Cable and Telecommunications Association Comments, MB 03-15, at p. 20.

distance factors make reception prohibitive); this irrelevant population would directly impact and, more specifically, delay the transition. The PSWN Program agrees with Motorola that “...in reviewing such showings from Channel 60–69 stations, the FCC must provide an even higher level of scrutiny than normal and fully consider the impact that any extension would have on public safety 700 MHz deployment opportunities.”²²

D. The Commission Should Review Detailed Studies Before Revising Channel Spacing

12. The Rules established to guide the channel spacing in the 700 MHz band and more particularly in the area in and surrounding the public safety band were designed to prevent any harmful interference among users. Lessons learned in the 800 MHz band have demonstrated the dangers when public safety operations are not adequately protected.²³ In its comment to this docket, Access Spectrum, LLC, requests that the Commission reexamine the land mobile and television spacing provisions of Section 27.60.²⁴ Access Spectrum, LLC notes “...that the rules allow 700 MHz licensees to submit engineering studies to justify deployments at less than the minimum spacing requirements.”²⁵ The PSWN Program requests that those detailed studies are performed to ensure that no harmful interference would result due to the proposed changes in the band. In addition, the PSWN Program notes that there should be swift and strict enforcement actions taken to discourage entities from creating interference.

IV. CONCLUSION

13. The PSWN Program recognizes the contributions of the other respondents to this docket that can help generate the input necessary for the Commission to develop the appropriate

²² Motorola Comments, MB 03-15, at p. 8.

²³ See generally, WT Docket 02-55 proceedings, In the Matter of Improving Public Safety Communications in the 800 MHz Band [and] Consolidating the 900 MHz Industrial/Land Transportation and Business Pools.

²⁴ See Access Spectrum Comments, MB 03-15, at pp. 6–7.

²⁵ *Id.*, at p. 7.

measures necessary for this swift transition. With consideration of the diverse stakeholders and their interests expressed in this proceeding, it is imperative that the Commission act quickly and diligently to provide for access to the spectrum desperately needed by public safety. Public safety must remain a priority until the longstanding shortfall of spectral resources needed to protect lives and assets is adequately addressed and the reliability and quality of those communications are guaranteed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven Proctor", written over a horizontal line.

Steven Proctor
Executive Director,
Utah Communications Agency Network
Executive Vice-Chair,
PSWN Executive Committee

**Before the
Federal Communications Commission
Washington, DC 20554**

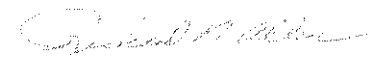
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In the Matter of

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I, Richard N. Allen, Senior Associate, Booz Allen Hamilton, 8283 Greensboro Drive, McLean, Virginia, 22102-3838, hereby certify that on this date I caused to be served, by first-class mail, postage prepaid (or by hand where noted) copies of the Public Safety Wireless Network Program's Reply Comments, *In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children's Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168, the original of which is filed herewith and upon the parties identified on the attached service list.

DATED at Fair Oaks, Virginia this 21st day of May 2003.



Richard N. Allen

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